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This issue contains

DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

(T.D. 76–62)

Bonds

Approval and discontinuance of bonds on Customs Form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., February 25, 1976.

Bonds on Customs Form 7587 for the control of instruments of international traffic of the kind specified in section 10.41a of the Customs Regulations have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of list.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director; amount
American President Lines, Ltd., 601 California St., San Francisco, CA; Safeco Ins. Co. of America (PB 11/27/73) D 12/1/75 [1]	Nov. 27, 1975	Nov. 27, 1975	Seattle, WA; $10,000
Bemo Shipping Co., Inc. (A N.Y. Corp.), One World Trade Center, New York, NY; Federal Ins. Co.	Jan. 13, 1976	Jan. 13, 1976	New York Seaport; $10,000
California Cargo Containers, Inc., 801 Maritime St., Oakland, CA: Ins. Co. of North America D 12/23/75	Jan. 8, 1973	Feb. 26, 1973	San Francisco, CA; $10,000
G. C. Crommet Inc., 111 Jersey Ave., W. Babalon, NY; Peerless Ins. Co.	Jan. 29, 1976	Jan. 30, 1976	New York Seaport; $10,000
Export Pacific, Inc., 1942 East Eleventh St., Tacoma, WA; St. Paul Fire & Marine Ins. Co.	Feb. 6, 1976	Feb. 12, 1976	Seattle, WA; $10,000

See footnotes at end of table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director; amount
Fan International S.A.R.I., Route de Dudelange, Bettembourg, Luxembourg; Peerless Ins. Co. D 2/2/76	Feb. 3, 1975	Feb. 5, 1975	Norfolk, VA; $10,000
Fraser Paper, Ltd., Madawaska, ME; Maine Bonding and Casualty Co.	Dec. 17, 1975	Jan. 8, 1976	Portland, ME; $10,000
Gamma Industries, A Div. of Nuclear Systems, Inc., P.O. Box 2543, Baton Rouge, LA; Fidelity & Deposit Co. of Md.	Dec. 23, 1975	Feb. 10, 1976	New Orleans, LA $10,000
Royal Netherlands Steamship Co., 5 World Trade Center, New York, NY; American Motorists Ins. Co. (PB 3/24/61) D 3/24/76 [2]	Mar. 24, 1976	Jan. 21, 1976	New York Seaport; $10,000
John H. Walker Co., Inc., 316 Friendship Center, Greensboro, NC; Peerless Ins. Co.	Jan. 14, 1976	Jan. 14, 1976	Norfolk, VA; $10,000
Watney U.S.A. Ltd., 155 Connecticut St., San Francisco, CA; St. Paul Fire & Marine Ins. Co. D 2/10/76	Feb. 10, 1969	Feb. 10, 1969	San Francisco, CA; $10,000
C. G. Welchman & Company, Inc., (Agents for ICI Fibers), 45 North Broad St., Ridgewood, NJ; Peerless Ins. Co.	Feb. 2, 1976	Feb. 2, 1976	Norfolk, VA; $10,000

[1] Principal is American President Lines, Ltd. & Sub. Western Stevedoring & Terminal Corp.
[2] Surety is Ins. Co. of North America.

(BON–3–10)

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(T.D. 76–63)

Bonds

Approval and discontinuance of Carrier bonds, Customs Form 3587

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., February 25, 1976.

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued

on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of list.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director; amount
Acme Fast Freight Inc., 2335 New Hyde Park Road, New Hyde Park, NY; motor carrier, Ins. Co. of North America	Feb. 1, 1976	Feb. 11, 1976	St. Louis, MO; $25,000
American President Lines, Ltd., 601 California St., San Francisco, CA; water carrier, Ins. Co. of North America (PB 5/14/74) D 1/26/76 [1]	Dec. 31, 1975	Jan. 26, 1976	San Francisco, CA; $100,000
Bar-Fly Corp., 2770 Summer St., Stamford, CT; air carrier, Commercial Union Ins. Co. D 2/11/76	Apr. 23, 1975	May 22, 1975	New York Seaport; $50,000
Bates Truck Line, Inc., 802 North Nagle, Houston, TX; motor carrier, St. Paul Fire & Marine Ins. Co. D 2/5/76	Jan. 15, 1974	Jan. 16, 1974	Houston, TX; $25,000
Birmingham-Nashville Express, Inc., 317 Arlington Cove, Nashville, TN; motor carrier, The Aetna Casualty & Surety Co.	Nov. 21, 1975	Feb. 6, 1976	New Orleans, LA; $25,000
Bradley's Express Inc., 141 Berlin Turnpike, Berlin, CT; motor carrier, American Home Assurance Co. D 2/2/76	Jan. 3, 1975	Feb. 3, 1975	New York Seaport; $25,000
Coastal Tank Lines Inc., 250 North Cleve.-Mass. Road, Akron, OH; motor carrier, Protective Ins. Co.	Jan. 1, 1976	Feb. 5, 1976	Cleveland, OH; $50,000
Del Transport, Inc., 284 Charles St., Providence, RI; motor carrier, The Aetna Casualty & Surety Co.	Sept. 22, 1975	Sept. 25, 1975	Providence, RI; $25,000
Delaware Ship Supply Co., Inc., 1820-26 S. 4th St., Philadelphia, PA; motor carrier, Federal Ins. Co.	Jan. 28, 1976	Feb. 4, 1976	Philadelphia, PA; $25,000
Eastern Freight Ways, Inc., Eastern and Moonachie Avenues, Carlstadt, NJ; motor carrier, Seaboard Surety Co.	Sept. 15, 1975	Feb. 4, 1976	New York Seaport; $50,000
Emanuel's Express, 201 E. Township Line Road, Kirklyn, PA; motor carrier, The Hanover Ins. Co.	Feb. 2, 1976	Feb. 5, 1976	Philadelphia, PA; $25,000
Frank's Trucking Corp., 1705 South Clark St., Chicago, IL; motor carrier, St. Paul Fire & Marine Ins. Co. (PB 4/21/74) D 2/10/76 [2]	Feb. 1, 1976	Feb. 10, 1976	Chicago, IL; $30,000
Fruitbelt Trucking Inc., 12 Smith St., St. Catharines, Ontario, Canada; motor carrier, The Continental Ins. Co. (PB 7/25/68) D 2/10/76 [3]	Jan. 30, 1976	Feb. 10, 1976	Buffalo, NY; $25,000

See footnotes at end of table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director; amount
Brian R. Glynn Customhouse Broker Inc., 878 Burbank Ave., Suffield, CT; freight forwarder, Peerless Ins. Co.	Jan. 26, 1976	Jan. 28, 1976	Bridgeport, CT; $25,000
David Graham Co., P.O. Box 115, 2307 Bristol Pike, Croydon, PA; motor carrier, Midland Ins. Co.	Jan. 30, 1976	Feb. 5, 1976	Philadelphia, PA; $50,000
International Detective Service, Inc., 1828 Westminster St., Providence RI; motor carrier, Fidelity & Deposit Co.	Dec. 2, 1975	Feb. 5, 1976	Providence, RI; $25,000
Laramee's Transit, Inc., 299 First Ave., Woonsocket, RI; motor carrier, Continental Casualty Co. D 12/22/75	Oct. 23, 1967	Nov. 4, 1967	Boston, MA; $25,000
P. B. Mutrie Motor Transportation Inc., Calvary St., Waltham, MA; motor carrier, Protective Ins. Co. D 2/3/76	Dec. 8, 1972	Jan. 2, 1973	Boston, MA; $50,000
Quinn Freight Lines, Inc., 1093 North Montello St., Brockton, MA; motor carrier, Northwestern National Ins. Co. (PB 10/31/67) D 1/30/76 [4]	Jan 23, 1976	Jan. 30, 1976	Boston, MA; $50,000
Reisch Trucking & Transportation Co., Inc., 819 Union Ave., Pennsauken, NJ; motor carrier, Hanover Ins. Co.	Jan. 12, 1976	Feb. 4, 1976	Philadelphia, PA; $50,000
Western Marine Supply, Inc., 801 South Holgate St., Seattle, WA; motor carrier, The Aetna Casualty & Surety Co.	Feb. 10, 1976	Feb. 12, 1976	Seattle, WA; $25,000

[1] Surety is Safeco Ins. Co. of America
[2] Surety is Aetna Ins. Co.
[3] Principal is Fruitbelt Produce Trucking Ltd., Surety is Globe Indemnity Co.
[4] Surety is Seaboard Surety Co.

(BON–3–03)

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(T.D. 76-64)

Bonds

Approval of consolidated aircraft bond (air carrier blanket bond) Customs Form 7605

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., February 25, 1976.

The following consolidated aircraft bond has been approved as shown below:

Name of principal and surety	Date term commences	Date of approval	Filed with area director of Customs; amount
Air Jamaica (1968) Ltd., 19 East 49th Street, New York, NY; American Motorists Ins. Co.	Feb. 16, 1976	Feb. 11, 1976	New York Seaport; $100,000

The foregoing principal has not been designated as a carrier of bonded merchandise.

(BON-3-01)

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(T.D. 76-65)

Cotton, wool and manmade fiber textiles—Restriction on entry

Restriction on entry of cotton, wool and manmade fiber textiles manufactured or produced in Macau

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., February 27, 1976.

There is published below the directive of February 11, 1976, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the visa requirement for cotton, wool and manmade fiber textiles manu-

factured or produced in Macau. This directive further amends, but does not cancel, that Committee's directive of August 6, 1973 (T.D. 73–241).

This directive was published in the FEDERAL REGISTER on February 17, 1976 (41 FR 7170), by the Committee.

(QUO–2–1)

WILLIAM D. SLYNE,
Acting Director,
Duty Assessment Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

February 11, 1976.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

This directive further amends, but does not cancel, the directive of August 6, 1973 from the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit, under certain specified conditions, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 1–64; wool textile products in Categories 101–126, 128, and 131–132; and man-made fiber textile products in Categories 200–243, produced or manufactured in Macau for which Macau had not issued an appropriate visa. One of the requirements is that each visa include the signature of a Macau official authorized to issue visas. The directive of August 6, 1973 was previously amended by directives of March 6, 1975 and April 23, 1975.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of March 3, 1975, between the Governments of the United States and Portugal, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, the directive of August 6, 1973 is further amended to authorize Dr. Jose Bernardino Marques Ferreira to issue visas in addition to the three officials previously designated. A com-

plete list of Macau officials currently authorized to issue visas is enclosed.

The actions taken with respect to the Government of Portugal and with respect to imports of cotton, wool and man-made fiber textile products from Macau have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States.

Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ALAN POLANSKY,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance U.S. Department of Commerce

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Macau Officials Currently Authorized to Issue Visas for Cotton, Wool and Man-Made Fiber Textile Products Exported to the United States

Dr. Jose Francisco Cadorio Ferreira Lino
Dr. Armando Gil Lopes de Campos
Mrs. Olivia Maria dos Remedios Cesar
Dr. Jose Bernardino Marques Ferreira

(T.D. 76–66)

Cotton and manmade fiber textiles—Restriction on entry

Restriction on entry of cotton and manmade fiber textiles manufactured or produced in Thailand

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., February 27, 1976.

There is published below the directive of February 2, 1976, received by the Commissioner of Customs from the Chairman, Committee for

the Implementation of Textile Agreements, concerning the restriction on entry into the United States of cotton and manmade fiber textiles in specific categories manufactured or produced in Thailand. This directive cancels and supersedes that Committee's directives of March 19, 1975 (T.D. 75–84), and September 26, 1975 (T.D. 75–256).

This directive was published in the FEDERAL REGISTER on February 5, 1976 (41 FR 5348), by the Committee.

(LIQ–3–O:D:T)

WILLIAM D. SLYNE,
Acting Director,
Duty Assessment Division.

THE ASSISTNAT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

February 2, 1976.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

This directive cancels and supersedes the directive issued to you on March 19, 1975 by the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry of cotton textile products in certain specified categories, produced or manufactured in Thailand and exported to the United States during the twelve-month period which began on April 1, 1975. It also cancels and supersedes the directive of September 26, 1975 concerning imports of man-made fiber textile products in Categories 219 and 229, produced or manufactured in Thailand.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 29, 1975, between the Governments of the United States and Thailand, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective on February 5, 1976 and for the twelve-month period beginning on January 1, 1976 and extending through December 31, 1976, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 45/46/47

and man-made fiber textile products in Categories 219, 221, 222, 224 and 229, produced or manufactured in Thailand, in excess of the following levels of restraint:

Category	*Twelve-Month Level of Restraint*[1]	
45/46/47	1,500,000	square yards equivalent
219	871,460	dozen
221	46,196	dozen
222	280,899	dozen
224	423,077	pounds
229	180,606	dozen

Textile products in Categories 45/46/47, 219, 221, 222, 224, and 229, produced or manufactured in Thailand and exported to the United States before February 1, 1976, shall not be subject to this directive.

Textile products in Categories 221, 222, and 224 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) before the effective date of this directive shall not be denied entry under this directive.

The levels of restraint set forth above are subject to adjustment in the future, pursuant to the provisions of the bilateral agreement of December 29, 1975, between the Governments of the United States and Thailand which provide, in part, that: (1) levels of restraint in Group I may be increased by 10 percent and in Group II, by seven percent; (2) these levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; (3) consultation levels may be increased within the aggregate and applicable group limits upon agreement between the two governments; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A detailed description of the categories in terms of T.S.U.S.A. numbers and factors for converting category units into equivalent square yards was published in the FEDERAL REGISTER on February 3, 1975 (40 FR 5010), as amended on December 31, 1975 (40 FR 60220).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

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[1] The levels of restraint have not been adjusted to reflect any entries made after December 31, 1975.

The actions taken with respect to the Government of Thailand and with respect to imports of cotton and man-made fiber textile products from Thailand have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ALAN POLANSKY,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance U.S. Department of Commerce

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(T.D. 76-67)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., February 24, 1976.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Hong Kong dollar:

February 16, 1976	Holiday
February 17–20, 1976	$0.1990

Iran rial:	
February 16, 1976	Holiday
February 17, 1976	$0.0143
February 18, 1976	.0143
February 19, 1976	.0143
February 20, 1976	.0144
Philippines peso:	
February 16, 1976	Holiday
February 17, 1976	$0.1330
February 18, 1976	.1330
February 19, 1976	.1330
February 20, 1976	.1325
Singapore dollar:	
February 16, 1976	Holiday
February 17, 1976	$0.4038
February 18, 1976	.4020
February 19, 1976	.4024
February 20, 1976	.4027
Thailand baht (tical):	
February 16, 1976	Holiday
February 17, 1976	$0.0500
February 18, 1976	.0500
February 19, 1976	.0500
February 20, 1976	.0490

(LIQ-3-O:D:T)

JAMES D. COLEMAN,
Acting Director,
Duty Assessment Division.

(T.D. 76-68)

Foreign currencies—Certification of rates

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., February 24, 1976.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the

following rates of exchange which varied by 5 per centum or more from the quarterly rate published in Treasury Decision 76–30 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following daily rates:

Italy lira:	
February 16, 1976	Holiday
February 17, 1976	$0.001303
February 18, 1976	.001301
February 19, 1976	.001298
February 20, 1976	.001286
Spain peseta:	
February 16, 1976	Holiday
February 17, 1976	$0.015060
February 18, 1976	.015075
February 19, 1976	.015090
February 20, 1976	.015080

(LIQ–3–O:D:T)

JAMES D. COLEMAN,
Acting Director,
Duty Assessment Division.

[Published in the FEDERAL REGISTER March 5, 1976 (41 FR 9575)]

(T.D. 76–69)

Master color batches—Color concentrates

T.D. 73–138 revised to include benzenoid toners as well as benzenoid dyes

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., March 3, 1976.

T.D. 73–138 limited the court decision in *Verona Dyestuffs Div. of Verona-Pharma Chemical Corp.* v. *United States*, C.D. 4369, to non-benzenoid pigments in a benzenoid plastics medium (urethane black paste BH). The T.D. stated that a benzenoid color in a benzenoid plastics medium is classified as a benzenoid dye in item 406.50,

Tariff Schedules of the United States (TSUS), (urethane red paste BH).

In view of the Government intention to retry the issue of the tariff classification of master color batches and color concentrates, Customs is of the opinion that, pending a court decision on the matter, color concentrates or master color batches are classified under item 406.50 (dyes) or 406.70 (toners), depending on the benzenoid coloring material used. T.D. 73–138 is modified accordingly. (041129)

(CLA–2–R:CV)

VERNON D. ACREE,
Commissioner of Customs.

(T.D. 76–70)

Synopses of drawback decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., February 27, 1976.

The following are synopses of drawback rates and amendments issued September 17, 1975, to February 17, 1976, inclusive, pursuant to sections 22.1 and 22.5, inclusive, Customs Regulations.

(DRA–1–09)

LEONARD LEHMAN
Assistant Commissioner,
Regulations and Rulings.

(A) *Adhesives.*—Manufactured under section 1313(b) by Armstrong Cork Co., Lancaster, PA, with the use of tetra hydrofuran.

Rate effective on articles manufactured on and after October 15, 1974, and exported on and after January 3, 1975.

Manufacturer's statement of February 21, 1975, forwarded to Regional Commissioner of Customs, Baltimore, MD, January 6, 1976.

(B) *Aircraft.*—T.D. 56286–B, covering airplanes manufactured under section 1313(a) by Beech Aircraft Corp., Wichita, KS, with the use of imported engines, superchargers, silencers, and silencer elements, *amended* to cover aircraft manufactured with the use of imported aircraft engines.

Amendment effective on articles manufactured and exported on and after September 10, 1973.

Amendment issued by Regional Commissioner of Customs, Chicago, IL, September 17, 1975.

(C) *Axles, highway trailer.*—Manufactured under section 1313(b) by Standard Forge and Axle Co., Inc., Montgomery, AL, with the use of hot rolled seamless mechanical steel tubes.

Rate effective on articles manufactured on and after July 31, 1975, and exported on and after November 5, 1975.

Manufacturer's statement of December 19, 1975, forwarded to Regional Commissioner of Customs, New Orleans, LA, February 17, 1976.

(D) *Cable, KS–19383.*—Manufactured under section 1313(b) by ITT Cable-Hydrospace, Div. of International Telephone and Telegraph Corp., National City, CA, with the use of copper strip and steel wire.

Rate effective on articles manufactured on and after January 1, 1974, and exported on and after February 10, 1975.

Manufacturer's statements of April 2 and July 15, 1975, forwarded to Regional Commissioner of Customs, Los Angeles, CA, January 26, 1976.

(E) *Carbon steel products.*—T.D. 47223–C, as amended by T.D.'s 52991–G, 53323–K, 53554–E, and 54519–B, covering, among other things, alloy steel tubular products manufactured under section 1313(b) by United States Steel Corp., National Tube Div., Pittsburgh, PA, at its Ellwood, PA, factory, with the use of alloy steel tube rounds (bars and billets), further *amended* to cover carbon steel products manufactured by United States Steel Corp., Pittsburgh, PA, at its factories located at Gary, IN; McKeesport, PA; and Cleveland, OH, with the use of steel tube rounds (bars and billets).

Amendment effective on articles manufactured and exported on and after January 1, 1975.

Supplemental statement of January 12, 1976, forwarded to Regional Commissioner of Customs, New York, NY, January 26, 1976.

(F) *Clocks.*—Manufactured under section 1313(a) by Howard Miller Clock Co., Zeeland, MI, with the use of imported clock parts.

Rate effective on articles manufactured on and after January 10, 1974, and exported on and after July 31, 1974.

Rate issued by Regional Commissioner of Customs, Chicago, IL, November 13, 1975.

(G) *Computer central processing units, computer peripheral devices, and computer terminal devices.*—Manufactured under section 1313(b) by Sperry UNIVAC, Div. of Sperry Rand Corp., Blue Bell, PA, at its Roseville, MN; Utica, NY; Bristol, TN; and Salt Lake City, UT, factories, with the use of power supplies.

Rate effective on articles manufactured on and after June 1, 1972, and exported on and after June 6, 1975.

Manufacturer's statement of August 21, 1975, forwarded to Regional Commissioner of Customs, New York, NY, January 22, 1976.

(H) *Computer system.*—Manufactured under section 1313(a) by Amdahl Corp., Sunnyvale, CA, with the use of imported computer subunits.

Rate effective on articles manufactured on and after July 1, 1975, and exported on and after September 19, 1975.

Rate issued by Regional Commissioner of Customs, San Francisco, CA, November 28, 1975.

(I) *Dye.*—Manufactured under section 1313(a) by E.I. du Pont de Nemours & Co., Wilmington, DE, at its Deepwater, NJ, factory, with the use of imported chicago acid technical and imported dianisidine base paste.

Rate effective on articles manufactured on and after February 14, 1975, and exported on and after March 14, 1975.

Rate issued by Regional Commissioner of Customs, Baltimore, MD, November 18, 1975.

(J) *Ferrocolumbium, crushed.*—T.D. 43273–C, as extended and amended, covering, among other things, molybdenum oxide, ferromolybdenum, and ammonium molybdate manufactured under section 1313(b) by Molycorp., Inc., White Plains, NY, at its Washington and York, PA, factories, with the use of, among other things, molybdenum concentrate and ores, further *amended* to cover crushed ferrocolumbium manufactured under section 1313(a) by the said company at its above mentioned factories with the use of imported crude ferrocolumbium.

Amendment effective no articles manufactured on and after July 13, 1970 and exported on and after September 11, 1973.

Amendment issued by Regional Commissioner of Customs, New York, NY, November 17, 1975.

(K) *Forged flanges, rough and finished.*—T.D. 53931–B, as amended, covering, among other things, forgings, forged steel flanges, pipe fittings, and tubular welding fittings manufactured under

section 1313(a) by Ladish Co., Cudahy, WI, at its Cudahy and Kenosha, WI, factories, with the use of imported or drawback steel pigs, ingots, blooms, slabs, billets, bars, rods, plates, sheets, tubing or pipe, further *amended* to cover (1) rough forged flanges manufactured under section 1313(a) at the Cudahy, WI, factory, with the use of the above cited materials, and (2) finished forged flanges manufactured under section 1313(a) at a new factory located at Houston, TX, with the use of drawback rough forged flanges.

Amendment effective on articles covered by (1), above, which are manufactured on and after July 3, 1970, and delivered to the Houston, TX, factory on and after November 14, 1972, and on articles covered by (2), above, which are manufactured and exported on and after May 21, 1973.

Amendment issued by Regional Commissioner of Customs, Chicago, IL, November 10, 1975.

(L) *Formulated Phosvel.*—Manufactured under section 1313(b) by Chem-Trix Corp., Houston, TX, with the use of 4-bromo 2,5 dichlorophenol and benzene phosphorous thiodichloride.

Rate effective on articles manufactured on and after October 1, 1975, and exported on and after November 1, 1975.

Manufacturer's statement of December 8, 1975, forwarded to Regional Commissioner of Customs, Houston, TX, January 8, 1976.

(M) *Heaters, water, sub-assemblies, parts and components thereof; boilers, hydronic, sub-assemblies, parts and components thereof; tanks, water storage, sub-assemblies, parts and components thereof.*—T.D. 53436–C, as amended, authorizing the allowance of drawback under section 1313(b), on, among other things, automobile and truck frames and frame components manufactured by A.O. Smith Corp., Milwaukee, WI, at its Milwaukee, WI, and Nameoki Township, IL, factories, with the use of sheet, strip, and plate steel, further *amended* to cover water heaters, sub-assemblies, components and/or parts thereof; hydronic boilers, sub-assemblies, components and/or parts thereof; and glass-lined water storage tanks, sub-assemblies, components and parts thereof, manufactured under section 1313(b) by the corporation at its Kankakee, IL, factory with the use of cold rolled steel strip, and sheet, and hot rolled steel sheet, strip, and plate.

Amendment effective on articles manufactured on and after July 2, 1969, and exported on and after August 22, 1969.

Manufacturer's supplemental statements of February 9, 1973, September 18, 1974, and October 28, 1975, forwarded to Regional Commissioner of Customs, Chicago, IL, February 3, 1976.

(N) *Implements, agricultural; and industrial equipment.*—Manufactured under section 1313(b) by Sperry New Holland, Div. of Sperry Rand Corp., New Holland, PA, at its factories located at New Holland and Belleville, PA; Grand Island, and Lexington, NB; and Fowler, CA, with the use of hot rolled sheet steel coil.

Rate effective on articles manufactured on and after January 1, 1975, and exported on and after July 17, 1975.

Manufacturer's statement of December 8, 1975, forwarded to Regional Commissioners of Customs, Baltimore, MD, and San Francisco, CA, January 6, 1976.

(O) *Insecticides (coumaphos, dasanit, fenthion and Meta-Systox-R); herbicides (Sencor); and fungicides (Morestan).*—T.D. 54929–D, covering agricultural insecticides (Nitrox 80) manufactured under section1313(a) by Chemagro Corp., Kansas City, MO, with the use of imported methyl parathion, *amended* to cover (1) such articles manufactured by Chemagro Div. of Baychem Corp., *successor;* (2) the articles set forth in the headnote above manufactured under section 1313(a) by Chemagro Div. of Baychem Corp., with the use of imported intermediates (chloroferone E–330 (ethyl ester chloride) buthylthion, dimethyl phosphite and thiocresol) and technical insecticides; herbicides; and technical fungicides (Dyrene technical and Morestan technical); and, (3) all such articles manufactured by Chemagro Agricultural Div., Mobay Chemical Corp., *successor.*

Amendment effective on articles covered by (1), above, which are exported on and after October 1, 1971, the date of succession; on articles covered by (2), above, which are manufactured on and after October 6, 1973, and exported on and after February 19, 1974, and, on articles covered by (3), above, which are exported on and after July 21, 1974, the date of succession.

Amendment issued by Regional Commissioner of Customs, Chicago, IL, February 6, 1976.

(P) *Isooctyl acrylate.*—Manufactured under section 1313(b) by Minnesota Mining and Manufacturing Co., St. Paul, MN, at its Cordova, IL, factory, with the use of isooctyl alcohol.

Rate effective on articles manufactured on and after November 1, 1973, and exported on and after January 1, 1974.

Manufacturer's statement of November 7, 1975, forwarded to Regional Commissioner of Customs, Los Angeles, CA, February 3, 1976.

(Q) *Motor vehicles, motor vehicle parts and assemblies.*—T.D. 55263(A), as amended, and particularly as amended by T.D's 55580–D and 67–272–N, covering, among other things, automobile passenger cars and station wagons, and parts and sub-assemblies thereof manufactured under section 1313(b) by American Motors Corp., Detroit, MI, at its Milwaukee and Kenosha, WI, factories, with the use of cold rolled or hot rolled sheet steel or steel strip; cold rolled steel sheet or strip, oiled and cold rolled or hot rolled steel sheet or strip, aluminum killed, further *amended* to cover motor vehicles, motor vehicle parts and assemblies manufactured under section 1313(a) by the said company at its above factories with the use of imported and drawback motor vehicle parts and assemblies.

Amendment effective on articles manufactured on and after August 1, 1973, and exported on and after September 1, 1973.

Amendment issued by Regional Commissioner of Customs, Chicago, IL, November 12, 1975.

(R) *Mustard seed, blended and graded, and cleaned mustard seed.*—T.D. 72–121–G, as amended by T.D.'s 74–95–M, 74–149–K, 74–217–S and 74–279–L, covering, among other things, food products manufactured under section 1313(b) by General Mills, Inc., Minneapolis, MN, with the use of hard refined sugar and liquid sugar, further *amended* to cover blended and graded mustard seed and cleaned mustard seed manufactured under section 1313(b) by the said company at its factories located at Carlisle, IA; Buffalo, NY; Great Falls, MT; Johnson City, TN; Kansas City, MO; Los Angeles and Vallejo, CA; Duluth and Minneapolis, MN; Enid, OK; and Pocatello, ID, with the use of whole mustard seed.

Amendment effective on articles manufactured on and after November 15, 1974, and exported on and after November 29, 1974.

Supplemental statement of February 11, 1975, forwarded to Regional Commissioner of Customs, Chicago, IL, January 22, 1976.

(S) *Organs, electronic.*—Manufactured under section 1313(a) by Galanti Group, Inc., Elk Grove Village, IL, with the use of imported electronic organ component parts.

Rate effective on articles manufactured on and after September 5, 1975, and exported on and after September 19, 1975.

Rate issued by Regional Commissioner of Customs, Chicago, IL, November 12, 1975.

(T) *Parts, stamped auto.*—Manufactured under section 1313(b) by R. J. Tower Corp., Greenville, MI, with the use of low carbon hot rolled and cold rolled steel sheet and galvanized sheet in coils.

Rate effective on articles manufactured on and after December 1, 1974, and exported on and after June 18, 1975.

Manufacturer's drawback statements of July 7 and September 19, 1975, forwarded to Regional Commissioner of Customs, Chicago, IL, February 10, 1976.

(U) *Petroleum Products.*—T.D. 72–243(1), covering petroleum products manufactured under section 1313(b) by Tesoro-Alaskan Petroleum Corp., Anchorage, AK, at its Kenai, AK, refinery with the use of crude petroleum, *amended* to cover a change in name of the company to Tesoro-Alaskan Petroleum Company.

Amendment effective on articles manufactured and exported on and after March 7, 1975.

Supplemental statement of November 17, 1975, forwarded to Regional Commissioner of Customs, Houston, TX, February 5, 1976.

(V) *Steel reinforced aluminum cable.*—T.D. 50256–B, as amended, covering, among other things, aluminum, manufactured under section 1313 (a) and (b) by Aluminum Co. of America, Pittsburgh, PA, at its various factories, with the use of alumina, further *amended* to cover steel reinforced aluminum cable, manufactured by the company at its various factories, and an additional factory located at Marshall, TX, with the use of steel wire and rod of new specifications.

Amendment effective on articles manufactured and exported on and after January 2, 1973.

Manufacturer's supplemental statement of December 18, 1975, forwarded to Regional Commissioner of Customs, New York, NY, January 19, 1976.

(W) *Screens, well and industrial, and stainless steel wire.*—T.D. 55580(TT), as amended by T.D.'s 56549–S and 73–324–Y, covering, among other things, well and industrial screens, and stainless steel and low carbon steel wire in various sizes and shapes manufactured under section 1313(b) by Universal Oil Products Co., St. Paul MN, at its New Brighton, MN, and Thorofare, NJ, factories, with the use of stainless steel round wire and low carbon steel wire, further *amended* to cover a change in name to U.O.P., Inc., Johnson Div.

Amendment effective on articles exported on and after July 5, 1975, the date of the change in name.

Amendment issued by Regional Commissioner of Customs, Chicago, IL, November 20, 1975.

(X) *Vitamin capsules.*—T.D. 75–56–Y, covering vitamin capsules manufactured under section 1313(b) by Pharmacaps, Inc., Elizabeth,

NJ, at its Elizabeth factory, with the use of gelatin and other merchandise, *amended* to cover vitamin capsules manufactured by the company at the stated factory, with the use of apple and citrus pectins, fish liver oil, halibut liver oil, wheat germ oil, kelp, vitamin A palmitate, folic acid, digoxin, digitoxin, Vitamin D (Ergocalciferol), aerosil, pumpkin seed oil, choline bitartrate, and amaranth food coloring.

Amendment effective on articles manufactured on and after September 11, 1973, and exported on and after September 27, 1973.

Manufacturer's supplemental statement of November 3, 1975, forwarded to Regional Commissioner of Customs, New York, NY, January 26, 1976.

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1167)

ESCO MANUFACTURING CO., aka J. HOFERT CO. v. THE UNITED STATES, No. 75-27 (—F.2d—)

1. CLASSIFICATION OF IMPORTS – CHRISTMAS TREE LAMPS

Customs Court decision sustaining classification of certain electric filament lamps as "Christmas-tree lamps" under TSUS item 686.30, affirmed.

2. ID. – TSUS item 686.30

In deciding whether imported electric filament lamps properly classified as "Christmas-tree lamps" under TSUS item 686.30, fundamental inquiry is the determination of the meaning of "Christmas-tree lamps" at the time TSUS item 686.30 was enacted. Record here indicates that the term "Christmas-tree lamps" as employed in item 686.30 does include the imported C–9 type electric filament lamps.

3. GENERAL RULES OF CONSTRUCTION – INTENT OF CONGRESS

Having concluded that Congress intended that particular goods at bar be classified under item 686.30, court finds it unnecessary to decide whether item is a "classification by use" or an eo nomine provision. Where intent of Congress is apparent, rules of construction may not be employed to narrow, limit, or circumscribe statute.

United States Court of Customs and Patent Appeals,
February 26, 1976

Appeal from United States Customs Court, C.D. 4585

[Affirmed.]

Robert Glenn White (Glad, Tuttle & White) attorney of record, for appellant.
Rex. E. Lee, Assistant Attorney General, *Andrew P. Vance*, Chief Customs Section, *Max F. Schutzman* for the United States.

[Oral argument on February 4, 1976 by Robert Glenn White for appellant and by Max F. Schutzman for appellee]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, LANE and MILLER, *Associate Judges*.

RICH, Judge.

[1] This appeal is from the judgment of the United States Customs Court, 74 Cust. Ct. 57, C.D. 4585, 393 F. Supp. 608 (1975), sustaining the classification of certain electric filament lamps, imported from Japan, as "Christmas-tree lamps" under TSUS item 686.30. We affirm.

The articles, invoiced as C–9–1/4 type, 120 volt "Christmas Light Bulbs" or "Christmas Bulbs," are small, 10-watt, intermediate-base bulbs, specifically designed to produce colored light. These bulbs (hereafter referred to as "C–9" bulbs or lamps) are primarily sold during the Christmas season.

Statutory Provisions

The pertinent portions of the tariff schedules are:

	Electric filament lamps and electric discharge lamps, including ultra-violet and infra-red lamps and photo-flash lamps; electric luminescent lamps; and arc lamps:
	Filament lamps:
686.30	Christmas-tree lamps * * *
	* * * * * * * *
	Other:
	* * * * * * * *
686.90	Designed for operating at 100 volts or more * * *

Proceedings Below

The imported C–9 lamps were classified on entry as "Christmas-tree lamps," under TSUS item 686.30. Appellant pleaded that they are

properly classifiable under TSUS item 686.90, as modified by Presidential Proclamation, T.D. 68–9, as "other electric filament lamps, designed for operating at 100 volts or more." In pleading erroneous classification under item 686.30, appellant alleged said item to be a use provision governed by TSUS General Interpretative Rule 10(e)(i).

The Customs Court found that appellant had failed to overcome the presumption that the imported C–9 bulbs were properly classified. Considering item 686.30 as if it were governed by General Interpretative Rule 10(e)(i), i.e., as it would be if it were a classification "controlled by use (other than actual use)," the Customs Court held that appellant had not established "that the *class* or *kind* of merchandise imported was not chiefly used on Christmas trees." Pointing out that the slightly smaller C–7 lamp was concededly a "Christmas-tree lamp" within the meaning of item 686.30, the court found the C–9 lamp to be of the same class or kind. In so finding, the court noted that both lamps "were marketed and sold in the same manner during the Christmas season and through the same channels of distribution," that the predominant use by far for both "is in Christmas lighting strings or decorative purposes at Christmastime," that both "belong to the same product line and were displayed, advertised and uniformly referred to in the same manner," that both were constructed in the same manner, except for size, and that the decorative effect of both "is the same." As a consequence of its finding, the court stated that "it was incumbent upon plaintiff to establish that the predominant use of the class as a whole, i.e., C–7 and C–9 lamps combined, was not for the decoration of Christmas trees," and concluded that it had not done so since "on this score, plaintiff presented no evidence whatever." It stated further that "even though it were to be assumed that plaintiff had proven that the C–9 lamps *per se* were not chiefly used to decorate Christmas trees, this would still not be sufficient."

The court next considered the question before it on the basis that item 686.30 was not a so-called "classification by use," noting that the Customs Court had earlier indicated that item to be an eo nomine provision in *Mobilite, Inc.* v. *United States*, 70 Cust. Ct. 359, C.R.D. 73–11, 358 F. Supp 267 (1973). The court, referring to testimony by appellant's witnesses, stated: "The fact, however, that C–7 lamps, as well as C–9 lamps, were not usually referred to as Christmas-tree lamps does not mean that they were not commonly *known* as such." The court pointed to a 1939 report of the Tariff Commission entitled *Incandescent Electric Lamps* (T.C. Rept. No. 133, 2d series) which, in listing some representative flange-seal, miniature lamps, included "the larger Christmas-tree lamps designed for outdoor use." The

court concluded that the Commission was referring "solely to the C–9 bulb [for] as the record shows, this is the only bulb in the industry that fits the above description."

Appellant's Argument

Appellant argues that item 686.30 can be considered from only one point of view, as a so-called "classification by use." As to the Customs Court's consideration of the classification as eo nomine, appellant concedes only that it may be an "eo nomine by use" designation, but that even if it is, "the issue is still one of chief use."

Further, appellant argues that the Customs Court did not properly apply General Interpretative Rule 10(e)(i) because it failed to interpret the phrase "class or kind to which the imported articles belong" as being defined by the physical characteristics of the imported article itself. Defining the "class or kind" of article here as "C–9 ¼ electric filament lamps," appellant argues that "the weight of the evidence establishes * * * that the subject lamps are not chiefly used on Christmas trees," stating that "Of the six witnesses who testified as to observations of the use of the lamps in issue, five were in strong agreement that their predominate use, exceeding all other uses combined, was not on outdoor trees or other vegetation."

Opinion

We agree with the decision of the Customs Court. [2] The fundamental inquiry is the determination of the meaning of "Christmas-tree lamps" at the time TSUS item 686.30 was enacted. In determining such meaning, it is to be kept in mind that in a tariff statute Congress ordinarily employs terms in their commercial sense. The record here indicates that the term "Christmas-tree lamps" as employed in item 686.30 does include the imported C–9 lamps.

Appellee's witness Lehmann, whom the record shows to be singularly qualified to speak on the subject, testified that, in the lighting industry, there is an article of commerce known as a "Christmas-tree lamp," and that his company (General Electric Co.) has been making such lamps since 1899. He described "Christmas-tree lamps" as follows:

> Any one of several small light bulbs designed specifically to produce color. They are low wattage. They are designed to fit into the Christmas tree light sets. They must be compatible—the lamps must be compatible to the sockets and marketed under a specific Christmas sales plan. They have a filament which is designed to burn extra white hot to give good colors particularly in the blue and green areas, and therefore are shorter life lamps.

> There are other general purpose lamps, night lights, chandeliers—and so forth.
>
> * * * * * * *
>
> A Christmas tree lamp is characterized by its shape, size, and the fact that it's primarily colored. The coating on a Christmas lamp is a critical part of its manufacture, whether domestic or overseas. The filament has to be especially designed so it will create colored light through the outer shell. It is a short life lamp, shorter than a standard lamp, and has a smaller than normal base with respect to household lamps and it is used primarily in Christmas tree strings at Christmas time and is marketed by General Electric and other organizations at Christmas time as Christmas lamps.

As to the C–9 lamp itself, Lehmann testified that it was introduced in 1932, that it is known interchangeably as a "Christmas lamp" or "Christmas-tree lamp," and that it is larger than the previously introduced C–6 lamp and the subsequently introduced C–7 lamp. Lehmann's testimony clearly supports the conclusion of the Customs Court that the "larger Christmas-tree lamps" referred to in the 1939 Tariff Commission report were C–9 lamps. Further, it is undisputed that the C–9 lamp is primarily used outdoors and is manufactured with a flange seal, characteristics which the Tariff Commission report mentions as being possessed by the "larger Christmas-tree lamps." It is also not disputed that the imported C–9 lamps are specifically designed to produce color, are of low wattage, have bases smaller than those of ordinary household lamps, and fit into Christmas tree light sets—characteristics which the witness Lehmann testified are possessed by "Christmas-tree lamps." Thus, there is ample support in the record for the view that at least since 1899 the term "Christmas-tree lamp" has referred to a certain article of commerce, that the C–9 lamp has the characteristics of such article, and has itself been considered to be a "Christmas-tree lamp" since at least 1939. In arguing against this view, appellant states that "there was no provision in the Tariff Act for Christmas-tree lamps until 1962," referring to T.D. 55615, 97 Treas. Dec. 157 (1962), which set out the following provision, carved out of paragraph 229 of the Tariff Act of 1930 by reciprocal trade agreement:

> Incandescent electric-light bulbs and lamps (except miniature Christmas tree) with metal filaments

Contrary to appellant's argument, this provision supports the view that the meaning of the term "Christmas-tree lamp" was the same in 1962, on the eve of the enactment of the TSUS, as it was in 1939, when the Tariff Commission report was published, since the provision

refers to Christmas-tree lamps as a type of miniature lamp, just as they were referred to in the 1939 report.

[3] We find it unnecessary to decide whether item 686.30 is a "classification by use" or an eo nomine provision, since we conclude that Congress intended that C–9 lamps, the particular goods at bar, be classified under this item. Where the intent of Congress is apparent, rules of construction may not be employed to narrow, limit, or circumscribe the statute. *Sandoz Chemical Works, Inc.* v. *United States*, 50 CCPA 31, C.A.D. 815 (1963). To control the result herein by labelling item 686.30 either a "use" or eo nomine provision would generate, not eliminate, ambiguity contrary to the Congressional intent. Appellant's arguments do not suffice to overcome the presumption of correctness attaching to the Government's classification, especially in light of the evidence supporting the classification.

The judgment of the Customs Court is *affirmed*.

Decisions of the United States Customs Court

Customs Decisions

(C.D. 4636)

W & J SLOANE, INC. *v.* UNITED STATES

Wood products

Hand carved wooden panels, imported from Hong Kong, in configurations of four, six, eight and twelve panels of various heights and weights, known as "Coromandel screens," were classified as wood screens under item 206.67 of the tariff schedules, as modified by T.D. 68–9, dutiable at the rate of 40, 36 or 32 percent

ad valorem, depending upon the date of entry. Plaintiff's claim for classification under item 207.00 of the schedules, as modified by T.D. 68–9, as articles not specially provided for, of wood, is overruled.

BURDEN OF PROOF—WOOD SCREENS—ITEM 206.67

Proof that the imported merchandise did not necessarily conform to the traditional uses of screens was not sufficient to discharge plaintiff's dual burden of proof. It was also incumbent upon plaintiff to establish that the claimed classification was correct, i.e., it more appropriately or more specifically described the items at bar.

SCREENS—COMMON MEANING

The imported merchandise was screens within the legislative intendment of item 206.67 covering wood screens, an *eo nomine* provision, as revealed by an examination of the summaries of tariff information. Lexicographic sources also establish that the term "screens" includes decorative screens. The blending of a utilitarian and decorative function in an imported article does not remove it from the category which describes it *eo nomine*. *Naumes Forwarding Service* v. *United States*, 55 Cust. Ct. 132, 137, C.D. 2562 (1965). The *eo nomine* provision for wood screens includes all forms of screens. *Nootka Packing Co. et al.* v. *United States*, 22 CCPA 464, 470, T.D. 47464 (1935).

COMPETING TARIFF PROVISIONS—GENERAL INTERPRETATIVE RULE 10(c)

Rule 10(c), which requires that "an imported article which is described in two or more provisions of the schedules is classifiable in the provision which most specifically describes it," is applicable in the instant case since the Coromandel screens are more specifically provided for under the *eo nomine* provision for wood screens. *Sanji Kobata et al.* v. *United States*, 66 Cust. Ct. 341, C.D. 4213, 326 F. Supp. 1397 (1971) distinguished, where proof of use of "byobu screens" established their proper classification under the more specific provision for paintings. The tariff provision in the instant case competing with the *eo nomine* provision for wood screens (206.67) was not one covering works of art of wood, but a basket provision for articles of wood (207.00). See *Chew Hing Lung* v. *Wise*, 176 U.S. 156 (1900); *Arthur* v. *Lahey*, 96 U.S. 112 (1878); *United States* v. *Astra Trading Corp.*, 44 CCPA 8, C.A.D. 627 (1956); *Atlanta Trading Corp.* v. *United States*, 42 CCPA 90, C.A.D. 577 (1954).

Court Nos. 68/23087, etc.

Port of New York

[Judgment for defendant.]

(Decided February 19, 1976)

Rode & Qualey (*Michael S. O'Rourke* and *Peter Jay Baskin* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*John N. Politis*, trial attorney) for the defendant.

RE, Judge: The question presented in this case pertains to the proper classification, for customs duty purposes, of certain merchandise imported from Hong Kong between 1967 and 1969. The merchandise, consisting of hand carved wooden panels in configurations of four, six, eight and twelve panels of various heights and weights, is known as "Coromandel screens."

The Customs Service classified the merchandise under item 206.67 of the Tariff Schedules of the United States [TSUS], as modified by T.D. 68–9, as "[w]ood * * * screens," and imposed a duty at the rate of 40, 36 or 32 percent ad valorem, depending upon the date of entry.

Plaintiff contests that classification and claims that the merchandise is properly classifiable under item 207.00, TSUS, as modified by T.D. 68–9, as "[a]rticles not specially provided for, of wood," and that the duty rate should therefore have been only 16⅔, 15 or 13 percent ad valorem, depending upon the date of entry. In essence, it is plaintiff's contention that, since the Coromandel screens are not used to "shield light, heat, or wind, or to effect privacy," they are not screens within the meaning of item 206.67 of the tariff schedules. Maintaining that they are not "screens," plaintiff, in its brief, refers to the merchandise as "Coromandel wall panels." It succinctly describes their use as follows:

> "* * * Coromandel wall panels are highly decorative articles used to beautify and enrich the surroundings in which they are installed. In this respect, they resemble or take the place of paintings, wall hangings, or other non-utilitarian articles of admiration and contemplation and are used in the same manner as paintings, wall hangings, or other non-utilitarian articles of admiration and contemplation which enhance the esthetic appeal of any room."

It is axiomatic in the law to state that the legal conclusion is dictated by the facts of the particular case. The thought is expressed well by the latin maxim *ex facto jus oritur*. In customs classification cases it is equally fundamental to state that the proper classification of imported merchandise also depends upon the competing tariff provisions. In the case at bar, the pertinent provisions may be set forth as follows:

Classified under:

Schedule 2, part 1:

"Subpart E. – Miscellaneous Products of Wood

* * * * * * *

Wood blinds, shutters, screens, and shades, all the foregoing, with or without their hardware:

* * * * * * *

206.67 Other---------- * * *"

Claimed under:

"Subpart F. – Articles Not Specially Provided For, of Wood

Subpart F headnote:

1. This subpart covers all products of wood which are not provided for elsewhere in the tariff schedules.

207.00 Articles not specially provided for, of wood---------- * * *"

Simply stated, the question presented is whether the Coromandel screens have been correctly classified as wood screens under item 206.67, or whether they should have been classified as articles not specially provided for, of wood, under item 207.00.

Although elementary, it is pertinent to state that, in customs classification cases, plaintiff bears the dual burden of proving that the classification ascribed to the merchandise by the Customs officials is wrong, and that the claimed classification is correct. The facts and the competing tariff provisions of the present case highlight the reason and purpose which impose this dual burden upon the plaintiff. Specifically, plaintiff will not succeed simply by showing that the uses of the Coromandel screens do not necessarily conform to the traditional or usual uses of screens. Rather, to prevail plaintiff must also prove that, in accordance with principles of customs law, its claimed classification is correct, i.e., it more specifically or more appropriately describes the merchandise.

Notwithstanding the excellence of its presentation, plaintiff, for a variety of reasons, could not and did not succeed in meeting this dual burden. Its claim must, therefore, fail.

It is basic in customs law that an *eo nomine* provision for an article, without limitation or contrary legislative intent, judicial decision, or administrative practice, includes all forms of the article. *Nootka Packing Co. et al.* v. *United States*, 22 CCPA 464, 470, T.D. 47464 (1935). The parties are in agreement that tariff item 206.67 for wood screens is an *eo nomine* provision. Clearly, therefore, if the Coromandel screens are indeed screens, within the legislative intendment of the provision for wood screens, they have been correctly classified, and plaintiff's protest must be overruled.

There was no evidence presented at the trial that the commercial meaning of "screens" was different from its common meaning. Therefore, it is only necessary to determine whether the imported merchandise consists of "screens" within the common meaning of that term. *Moscahlades Bros., Inc.* v. *United States*, 42 CCPA 78, 82, C.A.D. 575 (1954); *Nomura (America) Corp.* v. *United States*, 62 Cust. Ct. 524, 527, C.D. 3820, 299 F. Supp. 535 (1969), *aff'd*, 58 CCPA 82, C.A.D. 1007, 435 F.2d 1319 (1971).

The defendant, in support of its contention that the Coromandel screens are screens within the meaning of item 206.67, has submitted lexicographic definitions found in *Webster's Third New International Dictionary of the English Language, Unabridged* (1963) at page 2040:

> "screen 1: a device used as a protection from the heat of a fireplace or from drafts or as an ornamental piece: as a: a folding temporary partition consisting of hinged leaves usu. made of wood or metal framework covered with cloth, leather, or paper * * *
>
> "2a: a nonbearing partition that may be solid or pierced, is often ornamental, and is carried up to a height necessary for separation and protection."

It has also quoted extensively from the discussion of "screen" found in the *Encyclopedia Britannica*, Volume 20, 14th edition, 1929. This treatment, under the heading of "Screens of China and Japan," deals specifically with "Coromandel screens," and is helpful in understanding the nature of the merchandise in issue.

More significant, however, are the following quotations from the 1948 *Summaries of Tariff Information*, and the 1968 *Summaries of Trade and Tariff Information:*

> 1948 *Summaries of Tariff Information*, Volume 4, page 80 (with reference to paragraph 411, Tariff Act of 1930):
>
> "The products covered by this summary include woven roll shades, venetian blinds, 2-, 3-, or 4-section folding screens,

ornamental screens, and various other types of utility and *ornamental* blinds, curtains, shades, and screens. These are generally made of wood, bamboo, straw, pâpier maché, palm leaf, or compositions of wood." (Emphasis added.)

1968 *Summaries of Trade and Tariff Information*, Schedule 2, Volume 2, pages 85–87 (with reference to the provision for wood screens):

"The articles included here ordinarily are completely assembled wood shutters, blinds, shades and screens, with or without their hardware. * * *

* * * * * * *

"Utility or *decorative* screens usually consist of rectangular wooden frames in sizes comparable to those of shutters. Each frame encloses a thin panel of wood, cloth, plastic, paper, or other material, which may be plainly finished or *highly decorated.* Each frame may have leg members or a supporting stand, and generally three or four frames of the same size are hinged together to make a complete screen. Such movable screens are used to separate, conceal, shelter, or protect room and porch areas.

* * * * * * *

"The use of wood *decorative* screens has also been rising. Such screens, which have frames of wood, but may have panels of plastics or textile material, are increasingly used as *ornamental* screens and interior room dividers in modern homes." (Emphasis added.)

The quoted sources leave no doubt that the term "screens," includes screens that are "highly decorated," "decorative" and "ornamental"; i.e., decorative screens. As stated in the 1968 *Summaries*, screens may be either "utility or decorative."

It is often stated in customs classification cases that the controverted articles themselves are potent witnesses. Indeed, their careful examination may dictate a classification within a particular tariff provision. *United States* v. *The Halle Bros. Co.*, 20 CCPA 219, T.D. 45995 (1932); *Leaf Brands, Inc.* v. *United States*, 70 Cust. Ct. 66, C.D. 4409 (1973). A viewing of the Coromandel screen exhibited during the trial, and a study of the various exhibits submitted by the parties, indicate that the Coromandel screens or Coromandel "wall panels" are *decorative screens.*

Several features may be stated for the conclusion that Coromandel screens are decorative screens. First, it is not disputed that they are decorative. Indeed, plaintiff has taken great pains to prove that a "Coromandel is not a simple screen," but is an artistic creation having artistic merit, and is "installed in rooms for decorative purposes." Second, Coromandel screens have legs so that they may stand or be

affixed to the floor in accordion fashion. Third, they have design, decoration or decor on both sides, so that when used as a room divider, the decoration is present on both sides of the divided area. Fourth, the Coromandel screens are sufficiently large and tall to perform the functions of screens.

The fact that the Coromandel screens are "decorative" does not mean that they are not also functional. Plaintiff's exhibits illustrate the dual purpose or nature of the importations. Some of the pictures show Coromandel screens covering, in an accordion fashion, a corner of a dining room or bedroom. In addition to providing "emphasis" or a "focal point" they perform the utilitarian function of smoothing, rounding out, removing from view, or concealing an otherwise "bland" or vacant corner.

Additionally, the record is replete with testimony that the Coromandel screens are referred to as screens even by plaintiff's witnesses themselves. One witness testified that they would be screens except for their decor, and that Coromandel screens are distinguishable from screens only by their use. The testimony, in distinguishing screens by their "decor," is contradicted by the lexicographic and other sources cited which show that the term screens includes *decorative screens*.

On the facts and competing tariff provisions of the present case, the successful blending of a utilitarian and decorative function in an imported article does not remove that article from the tariff category which describes it *eo nomine*. As stated in *Naumes Forwarding Service* v. *United States*, 55 Cust. Ct. 132, 137, C.D. 2562 (1965): "[t]he fact that it is decorative does not indicate it is not a screen."

Also pertinent to the case at bar is the following sentence from the *Naumes* case:

> "While use may be of paramount importance in determining the identity of an article (*United States* v. *Quon Quon Company*, 46 CCPA 70, 73, C.A.D. 699), we do not think the weak use testimony here is sufficient to establish that these articles are not used as screens, *when other factors, such as their shape, construction, and resemblance to the well-known oriental folding screen, proclaim that they are.*" (Emphasis added.)

Although the use testimony in the present case may not be said to be "weak," there is no doubt that the Coromandel screens are "the well-known oriental folding screens" and proclaim what they are to all who view them.

Plaintiff's testimony at the trial concentrated on the use of the Coromandel screens. The emphasis upon use was obviously an attempt to bring the case within the reasoning of *Sanji Kobata et al.* v. *United States*, 66 Cust. Ct. 341, C.D. 4213, 326 F. Supp. 1397 (1971). In

Sanji Kobata certain Japanese "byobu" screens had been classified as "wood screens" under item 206.67 of the tariff schedules. Plaintiffs therein claimed that they were properly classifiable under item 765.03 of the tariff schedules which provided for "[p]aintings * * * executed wholly by hand." The question presented was whether plaintiffs succeeded in establishing that the byobu *screens* were not screens, as classified, but rather *paintings*, as claimed. On the facts, and the competing tariff provisions, this court held that they were paintings for tariff purposes.

In *Sanji Kobata*, on the question of appearance of an article and its use, it was stated:

> " * * * in the case at bar, although 'screens' might initially be a reasonable way to describe or refer to the articles in question, that designation commences to vanish as credible testimony is introduced showing a use that makes a different classification more appropriate. * * * " (Emphasis added.) 66 Cust. Ct. at 349.

The question to be answered is whether testimony as to use "makes a different classification more appropriate." Hence, the thrust of the reasoning of *Sanji Kobata* may be summarized by saying that the label that is placed upon imported merchandise, whether it be "byobu screen," or "Coromandel screen," does not foreclose further inquiry as to its proper classification for customs purposes. A careful examination of the byobu screens and their use in *Sanji Kobata* persuaded the court that they were *paintings* within the claimed tariff provision. This examination caused the court to observe that the screen was merely the surface, comparable to a canvas, upon which the artist painted the landscape or other picture. Indeed, the court noted that the finished artistic creation was embraced in the dictionary definition of a "painting" as a "decoration achieved by applying paint to a surface."

In addition to the testimony as to use, other factors warranted the classification of the byobu screens as "paintings." For example, it was clear that the byobu screens were designed to satisfy the demand in the United States for wall hangings. Unlike the Coromandel screens, only one side was decorated or adorned with the painting. Moreover, the byobu screens were smaller "and are not the larger size screens that are furniture and serve the function of screens." *Sanji Kobata et al.* v. *United States*, 66 Cust. Ct. at 353. Proof of use in *Sanji Kobata*, as confirmed by the physical characteristics of the byobu screens themselves, not only indicated that they were not used as screens, but also proved that they were used as paintings. Proof of use was helpful in identifying the article in order to determine whether they were "screens," as classified, or more appropriately, "paintings,"

as claimed. The court in *Sanji Kobata* held that as between those two tariff provisions, "paintings" was more appropriate.

The *Sanji Kobata* case is clearly distinguishable from the case at bar. On the facts, the byobu screens of *Sanji Kobata* differed from the Coromandel screens presently before the court. At the trial of the case at bar, plaintiff brought into the courtroom a seven foot high, eight panel Coromandel screen, a photograph of which was admitted into evidence as plaintiff's illustrative exhibit 1. The byobu screens were considerably smaller, had no legs and contained no painting on the back. The byobu screens were merely the canvas that contained the oriental hand painting and were hung on walls precisely as paintings. More important, in *Sanji Kobata* the competing provisions were *wood screens*, under item 206.67 of the tariff schedules, and *paintings*, under item 765.03 of the schedules. A thorough examination of the byobu screens, the testimony as to use and the exhibits in that case, led to the conclusion that the articles were *paintings*, as claimed.

However obvious, perhaps it is well to repeat that in *Sanji Kobata* plaintiffs succeeded in showing that the merchandise was described in an existing tariff provision for "paintings." In the case at bar, plaintiff has emphasized the artistic nature of the Coromandel screens and, by the careful introduction of testimony as to use, attempted to show that they are creations, and works of art of wood. Unfortunately for plaintiff, it labored mightily to fit the imported merchandise into a customs classification that does not exist in the tariff schedules.

Plaintiff correctly points out that the "competing tariff provisions in this action both cover merchandise 'of wood'." It is in error, however, when it asserts that the Coromandel screens are "not provided for elsewhere in the tariff schedules."

Defendant concedes that item 207.00 of the tariff schedules describes the Coromandel screens, since, clearly, they are articles of wood. It points out, however, that item 207.00 is a general or "basket" provision for articles of wood. Item 206.67 of the tariff schedules is more specific, being an *eo nomine* provision for wood screens. Defendant, therefore, indicates the applicability of General Interpretative Rule 10(c) which provides that:

> "an imported article which is described in two or more provisions of the schedules is classifiable in the provision which most specifically describes it; * * *"

Rule 10(c), in effect, codifies a rule of eminent good sense that if an imported article is described in two or more tariff provisions it is to be classified under the provision which describes it most specifically.

This rule of relative specificity, as it is known in customs law, is applicable to the case at bar since the Coromandel screens are more specifically provided for under the tariff provision for wood screens. As stated by the Supreme Court: "* * * the designation of an article, *eo nomine*, * * * must prevail over words of a general description which might otherwise include the article specially designated." *Chew Hing Lung* v. *Wise*, 176 U.S. 156, 160 (1900). See also *Arthur* v. *Lahey*, 96 U.S. 112 (1878); *United States* v. *Astra Trading Corp.*, 44 CCPA 8, 11, C.A.D. 627 (1956); *Atalanta Trading Corp.* v. *United States*, 42 CCPA 90, 94, C.A.D. 577 (1954); *United States* v. *Hatters' Fur Exchange*, 1 Ct. Cust. Appls. 198, T.D. 31237 (1911).

It is the determination of the court that the Coromandel screens were properly classified under item 206.67 of the tariff schedules, the *eo nomine* provision for wood screens. Their decorative or artistic features do not change their fundamental nature as screens within the *eo nomine* provision which embraces all forms of the article.

In view of the foregoing, the tariff classification of the imported merchandise by the Customs officials is sustained, and the protests are hereby overruled.

Judgment will issue accordingly.

(C.D. 4637)

ATAKA AMERICA, INC. *v.* UNITED STATES

Fiberscope

Court No. 73–6–01576–S

Port of New York

[Judgment for plaintiff.]

(Decided February 20, 1976)

Rode & Qualey (*Ellsworth F. Qualey* and *Peter Jay Baskin* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*John A. Gussow* and *Jerry P. Wiskin*, trial attorneys), for the defendant.

BOE, Chief Judge: The merchandise in question in the above-entitled action, described on the commercial and special invoices as "Olympus Upper GI Photofiberscope, Model GIF–D, without CLE

and FIT," was imported from Japan and entered at the port of New York on April 18, 1972.*

Upon liquidation the merchandise was classified under item 709.05, TSUS, as modified by T.D. 68–9, providing:

Schedule 7, Part 2, Subpart B, TSUS

	Medical, dental, surgical and veterinary instruments and apparatus (including electro-medical apparatus and opthalmic instruments), and parts thereof: Optical instruments and appliances, and parts thereof:	
	* * * * * * *	
709.05	Other	25% ad val.

The plaintiff, however, contends that said merchandise is more than a medical-optical instrument and claims that the same is properly classified as an electro-medical apparatus, and parts thereof, under item 709.17, TSUS, as modified by T.D. 68–9, providing:

Schedule 7, Part 2, Subpart B, TSUS

	Medical, dental, surgical and veterinary instruments and apparatus (including electro-medical apparatus and opthalmic instruments), and parts thereof: Optical instruments and appliances, and parts thereof:	
	* * * * * * *	
	Other:	
	* * * * * * *	
	Electro-medical apparatus, and parts thereof:	
	* * * * * * *	
709.17	Other	6% ad val.

From the exhibits and the testimony introduced, it appears that the instrument in question, commonly referred to as a fiberscope, consists of three major parts: a flexible insertion tube, a control unit, and a light guide portion. The tube portion of the instrument, designed to be inserted through the mouth and throat of the individual for the purpose of examining the esophagus, stomach and gastrointestinal areas of the body, consists of six channels: (1) a channel for suction, biopsy and cytology purposes; (2) a channel for visual

*CLE is a specially designed light power unit used in connection with the fiberscope. FIT is a camera specially designed for use in connection with the fiberscope.

observation consisting of the lens and a bundle of glass fibers; (3) and (4) channels for light illumination; (5) a channel for water, and (6) a channel for air.

The second portion of the instrument, referred to as a control unit, possesses an angle control mechanism which directs the tip of the fiberscope and also includes a mechanism for the control af air, water and suction, a biopsy port or opening and an eyepiece lens. The third portion of the instrument, a light guide portion, can be attached to a light source and power supply—a separate instrument described as model CLE. The power supply unit, although not a part of the imported merchandise in question, is suitable only for use with the fiberscope and provides the electricity required for the production of light and the operation of the instrument. The medical camera, referred to as FIT, although not a part of the imported merchandise in question, likewise is suitable only for use with the fiberscope. The light which is produced initially in the power supply unit is transmitted through the bundle of glass fibers within the fiberscope providing the illumination necessary for visual observation as well as the utilization of the other capabilities of the instrument hereinbefore described.

From the expert medical testimony presented at the trial of the within action, all witnesses agreed that the extent of use of the additional capabilities of the instrument in question depended in large part upon the custom and practice in each individual hospital. Although the defendant's medical witness indicated that in the New York Veterans Administration Hospital the use of the biopsy and photographic capabilities of the instrument was not as extensive as elsewhere, the medical testimony of the plaintiff supports the finding that in all instances in which the fiberscope is used for diagnostic purposes by that witness, the biopsy, cytology, suction and photographic capabilities of the instrument in question, are utilized from 80% to 100% of the time it is in operation.

It was further pointed out in the medical testimony presented that whereas the single function of an instrument such as an endoscope permits only a direct observation of the stomach and gastrointestinal areas, the added functions and capabilities of the fiberscope have caused an advancement in medical techniques which previously had been unknown and unavailable and which ultimately will permit further advanced techniques—not only diagnostic but also therapeutic in character.

There can be no dispute that vision is required in the use and operation of the fiberscope. There, likewise, can be no dispute that light provided by an electrical power unit and transmitted through bundles of fibers is required to permit a visual observation as well as

the other uses to which the instrument may be applied. The defendant, accordingly, predicates its argument on the premise that without light produced through the bundle of fibers and without the lens and channel through which vision is obtained, the capability to perform a biopsy, cytology, to secure stomach and gastrointestinal secretions through suction and to secure a "documentation" of the stomach area by means of photography would be precluded.

In many of the prior decisions relating to optical instruments, language has been used therein which, although appropriately descriptive and in proper context in the individual case in which it was used, may be inappropriate and misleading when applied to articles involving other and additional characteristics and functions such as found in the case at bar. This court as well as the Court of Customs and Patent Appeals frequently has adopted such definitive terms as "primary," "principal" or "dominant" functions as distinguished from "ancillary," "incidental" or "minor" functions. *Engis Equipment Company* v. *United States*, 62 Cust. Ct. 29, C.D. 3670, 294 F. Supp. 964 (1969); *Parsons Optical Laboratories, Harper, Robinson & Co.* v. *United States*, 68 Cust. Ct. 143, C.D. 4351 (1972); *United States* v. *American Machine & Metals, Inc.*, 29 CCPA 137, C.A.D. 183 (1941); *Chas. Kurz Co.* v. *United States*, 57 Cust. Ct. 90, C.D. 2735 (1966). It should not be interpreted that any criticism herein is being directed to these specific decisions or to the use of the language contained in each respective opinion. Suffice it to say, that in the case at bar, this court deems the use of the aforementioned definitive terms as the test for classification purposes to be inappropriate in that they do not truly articulate and reflect the legal justification upon which the determination of the instant action should be made. In attempting to determine which function or capability of the instrument in question is "primary" as distinguished from "ancillary" in view of the testimony presented with respect to its use, indeed, may easily lead one into a never-ending circle.

The Court of Customs and Patent Appeals, speaking through Judge Rich, in the case of *United States* v. *Oxford International Corp.*, CCPA —, C.A.D. 1154, 517 F. 2d 1374 (1975), has provided a helpful clarification and a meaningful direction with respect to the classification of articles which may possess multiple functions and uses. In reviewing and distinguishing those cases previously decided by that court in which the "more than" doctrine was determined to be applicable, the court summarized its conclusion by stating:

> "Similarly with the other cases cited by appellee, in each there was a second significant function in the importation justifying the application of the 'more than' doctrine." 62 CCPA at —.

Again, in referring to the application of this doctrine in the case of *United States* v. *Acec Electric Corp.*, 60 CCPA 113, C.A.D. 1091, 474 F. 2d 1009 (1973), the court stated:

> "The clutching function was an addition to the function of the motor in supplying power." 62 CCPA at —. (See other cases cited therein.)

It would serve no useful purpose to review at length once again the many cases referred to by the Court of Customs and Patent Appeals in its encompassing analysis of the meaning and application of the "more than" doctrine in the *Oxford International, Corp.* decision. This court, applying the test and standard enunciated by our appellate court, thus is confronted with the single question which is deemed to be basically determinative of the issue herein—does the article possess "a second significant function * * * justifying the application of the 'more than' doctrine."

From all of the testimony adduced, it, indeed, appears that the instrument in question not only has an optical function but also has additional "significant" functions, included among which are the capabilities of performing biopsies, cytologies and photography for documentation purposes. Vision as well as light is of extreme importance and is in most instances a necessity in whatever the human eye and hand may endeavor to perform. Notwithstanding the indispensable character of the functions of this instrument which provides light and visual observation, the additional capabilities and functions thereof are of such "significance" as to require the instrument in question to be held "more than" a medical-optical instrument and appliance.

Having determined that the plaintiff has met its burden of proof that the merchandise in question was not properly classified under item 709.05, TSUS, our consideration is directed to the fact as to whether the instrument in question may be properly classified as an electro-medical apparatus, and parts thereof, under item 709.17, TSUS, as claimed by the plaintiff.

The defendant has devoted a considerable portion of its brief to the contention that the instrument in question was not intended to be included within the purview of item 709.17, TSUS, by virtue of the fact that the superior heading to items 709.05 and 709.17, TSUS, is derived from the heading in section 90.17 of the *Brussels Nomenclature*, 1955. Because of the similarity of language, the defendant further contents that the interpretation of the language in the *Brussels Nomenclature* may be taken as evidence of the meaning intended by the Tariff Commission.

It is the opinion of this court, however, that the pleadings in the within action cause any continued consideration or discussion of the foregoing argument to be unnecessary. Paragraph "Eleventh" of plaintiff's complaint alleges:

> "Eleventh: That if the Court finds that the subject merchandise does not consist of optical instruments or apparatus, or parts thereof, said merchandise is properly provided for within the provisions of Item 709.17, *supra*, as claimed by the plaintiff herein;"

In its answer to plaintiff's complaint, the defendant has admitted plaintiff's foregoing allegation. In view of defendant's admission in the pleadings herein, the plaintiff's burden of proof with respect to its claimed classification has been fully satisfied and is no longer in issue.

Accordingly, the court finds that the merchandise in question properly should be classified as an electro-medical apparatus, and parts thereof, under item 709.17, TSUS, as modified by T.D. 68–9, as claimed by the plaintiff herein.

Let judgment be entered accordingly.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *February 23, 1976.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P76/37	Ford, J. February 17, 1976	Prepac, Inc.	72-3-00665, etc.	Item 706.60 20%	Item 774.60 10% and 8.5%	Judgment on the pleadings (granted; denied as to entries 455867 and 392619) Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Shopping bags and/or totes

P76/38	Richardson, J. February 18, 1976	Mill Engineering & Machinery Co.	70/46329(A)	Item 666.25 8%	Item 680.60 2%	Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	San Francisco Chilled iron hollow roll bodies (non-malleable cast-iron rollers for machines)
P76/39	Landis, J. February 18, 1976	Hancock Gross, Inc.	65/9888	Item 774.60 17%	Item 773.25 10%	U.S. v. Hancock Gross, Inc. (C.A.D. 1153)	Philadelphia Washers
P76/40	Ford, J. February 19, 1976	Creason Corrugating & Mach.	71-6-00463	Item 666.25 8%	Item 680.60 2%	Summary judgment Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	Houston Chilled roll bodies (non-malleablecast-iron rollers for machines)
P76/41	Ford, J. February 19, 1976	Ross Machine & Mill Supply Co.	71-9-01194	Item 666.25 6.5%, 8% or 9%	Item 680.60 1.5% or 2%	Summary judgment Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	Houston Chilled roll bodies (non-malleable cast-iron rollers for machines)
P76/42	Ford, J. February 19, 1976	Ross Machine & Mill Supply	72-7-01549	Item 666.25 6.5%	Item 680.60 1.5%	Summary judgment Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	Houston Chilled roll bodies (non-malleable cast-iron rollers for machines)
P76/43	Richardson, J. February 19, 1976	Creason Corrugating & Mach.	73-6-01377	Item 666.25 8% or 6.5%	Item 680.60 2% or 1.5%	Summary judgment Ross Machine & Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	Houston Chilled roll bodies (non-malleable cast-iron rollers for machines)

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R76/21	Ford, J. February 17, 1976	Patrick & Graves	R61/4840	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	Houston Footwear
R76/22	Richardson, J. February 17, 1976	H.M. Young Associates, Inc.	R67/21706, etc.	Constructed value	Invoiced prices	H.M. Young Associates, Inc. v. U.S. (C.D. 4388, aff'd C.A.D. 1138)	New York Tapes Webbing 3¾" #7010; Tapes Webbing 4" #7800; Cotton Waistband Elastic 3¾" #7010; Cotton Elastic Wasitband 3¼" #7010, etc.

R76/23	Richardson, J. February 17, 1976	H.M. Young Associates, Inc.	R69/9028, etc.	Constructed value	Invoiced prices (for Tapes Webbing 3¾" #7010; Cotton Waistband Elastic 3¾" #7010; Cotton Elastic Waistband 3¾" #7010, etc.) Invoiced prices less stated discounts (for identical articles having added description description "with 4, 5, or 6 splices")	H.M. Young Associates, Inc. v. U.S. (C.D. 4388, aff'd C.A.D. 1138)	New York See "Held Value" column for merchandise
R76/24	Ford, J. February 18, 1976	Dunnington & Arnold, Inc., a/c Ruby Importing Co.	R58/12022	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	New York Footwear
R76/25	Ford, J. February 18, 1976	Maher & Company, a/c Ruby Importing Co., et al.	R58/26547, etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	New Orleans Footwear
R76/26	Ford, J. February 18, 1976	New York Merchandise Co., Inc.	R62/10171 etc.	American selling price	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Value (Per Pair)"	Agreed statement of facts	Portland, Oreg. Footwear

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R76/27	Richardson, J. February 18, 1976	H. M. Young Associates, Inc.	R68/13442, etc.	Constructed value	Invoiced prices (for Tapes Webbing 3¾" #7010; Cotton Waistband Elastic 3¾" #7010; Cotton Elastic Waistband 3¾" #7010, etc.) Invoiced prices less stated discounts (for identical articles having added description "with 4, 5, or 6 splices")	H. M. Young Associates, Inc. v. U.S. (C.D. 4388, aff'd C.A.D. 1138)	New York See "Held Value" column for merchandise
R76/28	Richardson, J. February 18, 1976	H. M. Young Associates, Inc.	72-8-01726, etc.	Constructed value	Appraised values less $0.36 per yard	H. M. Young Associates, Inc. v. U.S. (C.D. 4388, aff'd C.A.D. 1138)	New York Tapes Webbing 3¾" #7010, 4" #7300, etc.

Judgments of the United States Customs Court in Appealed Cases

FEBRUARY 18, 1976

APPEAL 75–23.—John V. Carr & Son, Inc. *v.* United States.—HUB CASTINGS—MACHINES, PARTS OF—CAST-IRON ARTICLES—TSUS.—C.D. 4580. Appeal dismissed January 30, 1976.

FEBRUARY 19, 1976

APPEAL 75–6.—United States *v.* Yoshida International, Inc.—ZIPPERS—VALIDITY OF SURCHARGE—PRESIDENTIAL PROCLAMATION 4074.—C.D. 4550 reversed November 6, 1975. C.A.D. 1160.

Appeals to United States Court of Customs and Patent Appeals

APPEAL 76–9.—Alcan Sales, Div. of Alcan Aluminum Corporation *v.* United States.—UNWROUGHT ALUMINUM—VALIDITY OF SURCHARGE—PRESIDENTIAL PROCLAMATION 4074. Appeal from C.D. 4633.

The merchandise involved in this case consists of unwrought aluminum ingot entered on October 1, 1971 and liquidated on November 12, 1971. It was assessed with duty at the rate of 1 cent per pound under item 618.06, Tariff Schedules of the United States, plus an additional or supplemental duty of 10 percent ad valorem under item 948.00 of the Appendix to the Tariff Schedules of the United States. Item 948.00 was added to the tariff schedules by Presidential Proclamation No. 4074 (PP 4074) effective August 16, 1971. Plaintiff-appellant contested the assessment, liquidation and collection of all duties under item 948.00. Defendant-appellee moved for summary judgment "sustaining the classification and liquidation herein, for the reason that the decision of the United States Court of Customs and Patent Appeals in *United States* v. *Yoshida International, Inc.*, C.A.D. 1160, decided November 6, 1975, is *stare decisis*." Plaintiff responded to defendant's motion stating "[w]hile plaintiff disagrees with the decision and judgment in * * * *Yoshida International, Inc.*, C.A.D. 1160 * * * plaintiff acknowledges that said decision is *stare decisis* herein." A three-judge panel of the Customs Court granted defendant's motion for summary judgment and sustained the assessment of the supplemental duty of 10 percent ad valorem under item 948.00, *supra*. The

record in *United States* v. *Yoshida International, Inc.*, 63 CCPA—, C.A.D. 1160 (1975), *rev'g* 73 Cust Ct. 1, C.D. 4550 (1974), was incorporated herein.

It is claimed that the Customs Court erred in rendering a judgment sustaining the assessment of a supplemental duty of 10 percent ad valorem under item 948.00, *supra;* in applying the rule of *Yoshida International, Inc.*, C.A.D. 1160, *supra*, sustaining assessment of a supplemental duty of 10 percent ad valorem under item 948.00 on the basis of section 5(b) of the Trading with the Enemy Act of 1917, as amended; in not finding and holding that assessment of the supplemental duty of 10 percent ad valorem under item 948.00, imposed by way of PP 4074, was invalid; in not finding and holding that there was no statutory delegation of authority for PP 4074; in not finding and holding that PP 4074, in establishing supplemental duties on most imported articles, was an exercise of legislative power and, therefore, unconstitutional; in not ordering the district director of Customs at Duluth, Minnesota, or other appropriate Customs officer, to refund all duties collected under item 948.00.

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U.S. Customs Service

Court of Customs and Patent Appeals

Customs Court

UNITED STATES
GOVERNMENT PRINTING OFFICE
PUBLIC DOCUMENTS DEPARTMENT
WASHINGTON, D.C. 20402

OFFICIAL BUSINESS

U.S. GOVERNMENT PRINTING OFFICE
POSTAGE AND FEES PAID
375

U.S.MAIL

U.S. GOVERNMENT PRINTING OFFICE: 1976